C.R.No.1598/97

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL REVISION PETITION NO.1598/1997

Smt. Bhonri Devi & Anr.

Vs.

Bachan Singh & Ors.

DATE OF ORDER :: 01/12/2006

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. J.P. Saxena, for petitioners
None present for respondents

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Instant revision petition has been filed by the defendants-petitioners against the order dated 28th August, 1997 whereby the learned First Appellate Court allowed the appeal preferred by the non-petitioners-plaintiffs and remanded the matter to the learned trial Judge to grant opportunity and hold an inquiry about the knowledge of one of the defendants being expired, to him as provided under O.22 R.4(5) CPC and decide the matter afresh for abating the suit as observed by the learned trial Judge.

Non-petitioner-plaintiff filed a suit for cancellation of the decree impleading three defendants including the present petitioners and one of the defendants Shri Narayan, who during pendency of the proceedings, expired on 2nd January, 1985 and after it came to his notice about his death, application under O.22 R.4 CPC was filed on 12th

August, 1989 for taking his legal heirs on record along with application u/s.5 of the Limitation Act. His application filed u/s.5 of the Limitation Act was rejected on 20th April, 1991 and finally the application for taking his legal heirs on record was also rejected by the learned trial Judge on 9th July, 1992. The non-petitioner-plaintiff filed appeal and the learned Appellate Judge after taking into consideration the material which has come on record observed that since it was alleged in the application and so also in the application u/s.5 of the Limitation Act about the knowledge of death of one of the defendants it was all the more necessary to hold inquiry under O.22 R.4(5) CPC. In the absence whereof, very rejection of application was not justified. Accordingly, the order rejecting application under O.22 R.4 CPC by the learned trial Judge dated 9th July, 1992, was set aside and the matter was remanded back to consider the case afresh in terms of direction referred to in the order impugned dated 28th August, 1997. Hence, this revision petition.

Counsel for petitioners submits that no reasonable cause was shown in filing application despite the fact it came to the notice of the plaintiff-appellant about death of one of the defendants on 20.01.1986 and application u/s.5 of the Limitation Act was already rejected and no appeal was preferred against the said order, thus, the learned Appellate Judge has committed an error in accepting the appeal with the direction to re-consider the matter afresh, particularly, when the

order passed on application has attained finality and the order dated 9th July, 1992 was formal order rejecting their application. Counsel further submits that as it was a joint relief claimed by the plaintiff as such on one of the defendants being expired, the suit itself stands abated and it could not have been proceeded further even against the present defendants-petitioners.

No one appeared on behalf of respondents despite service.

I have considered the submission of the counsel and with his assistance perused the material and so also the finding recorded under the order impugned.

Learned trial Judge rejected the application filed under O.22 R.4 CPC vide order dated 9th July, 1992 whereby it was observed that the plaintiff had knowledge of one of the defendants being expired on 2nd January, 1985 and he was supposed to file application within the period of 90 days and since no reasonable explanation has come on record, as such the suit stands abated by rejection of the application vide order dated 9th July, 1992. While examining the validity of the order, the First Appellate Court took note of the relevant provisions of O.22 R.4(5) CPC and observed that no material has come on record in support of the finding which has been recorded about the knowledge of death of one of the defendants came to the notice of the plaintiff on 20th January, 1986 and as such, the very finding, which has been recorded by the learned trial Judge

in passing the order with regard to abatement since application could not have been filed within the period of 90 days, could not be said to be legally sustainable and in the absence of holding of inquiry, the suit in no manner can be said to be abated. The submission of the counsel is that on account of death of one of the defendants, the suit stands abated, as such no proceeding can be initiated any further.

In my opinion, the submission made is without any substance for the reason that this question has not arisen for consideration before the learned First Appellate Court as he has only directed to re-examine the matter after holding inquiry afresh in accordance with law.

I have gone through the order impugned and find that what has been observed is duly supported by material on record and there is no manifest error of jurisdiction which has been committed by the learned First Appellate Court which requires any interference by this court under the revisional jurisdiction of this Court.

Consequently, the present revision petition fails and is hereby dismissed.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.